

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

LAWRENCE BERKELEY NATIONAL  
LABORATORY  
1 CYCLOTRON ROAD  
BERKELEY, CALIFORNIA 94720

DOCKET HWCA 06/07-P004  
RE: FINAL ORDER  
DENYING PETITION FOR REVIEW

EPA ID No. CAD 059 494 310

California Code of  
Regulations, Title 22  
Section 66271.18

**I. INTRODUCTION**

On November 17, 2006, the Department of Toxic Substances Control (DTSC) issued a Hazardous Waste Facility Permit (Permit) renewal decision for the Lawrence Berkeley National Laboratory (LBNL) hazardous and mixed waste storage and treatment facility located at 1 Cyclotron Road, Berkeley, California, 94720 (the Facility). On December 21, 2006, Pamela Sihvola and L.A. Wood, on behalf of the Committee to Minimize Toxic Waste (collectively, the Petitioners), submitted a petition for review (an appeal) of DTSC's decision (the Petition). The Petition presented seven (7) comments. This denial constitutes DTSC's final decision on all issues raised in the Petition and it is effective on the date of mailing of this Order pursuant to California Code of Regulations, title 22, section 66271.18 (c).

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2 **II. JURISDICTION**

3 DTSC has jurisdiction over hazardous waste facility permits and the imposition of  
4 conditions on such permits pursuant to the California Health and Safety Code section  
5 25200 et seq., and California Code of Regulations, title 22, section 66271.18.

6 **III. BACKGROUND**

7 **A. FACILITY DESCRIPTION**

8 The Facility is a hazardous and mixed waste<sup>1</sup> storage and treatment facility  
9 situated in the eastern portion of the 130-acre LBNL. The U.S. Department of Energy is  
10 the owner of the Facility and the University of California at Berkeley (the University) is  
11 the operator. Collectively, the owner and operator are referred to as the "Permittee" in  
12 the Permit and this Order. The Facility is comprised of Building 85 and its associated  
13 yard with prefabricated units on a roughly 3-acre site. The Facility receives wastes  
14 generated by activities at the LBNL. Laboratory chemicals and reagents used for  
15 research experiments represent approximately 50 percent of the waste received at the  
16 Facility. The remaining waste streams are generated at LBNL's fabrication and  
17 maintenance shops.

18  
19 The following operations are conducted at the Facility: a) Storage of hazardous  
20 and mixed wastes in containers; b) consolidation of compatible wastes in U.S.  
21 Department of Transportation (DOT) approved containers; c) lab packing of small waste  
22 containers; and d) treatment of some wastes. Wastes are eventually shipped off-site for  
23 treatment, disposal or recycling.

24 Hazardous and mixed wastes accepted at the Facility are liquid and solid federal  
25 Resource Conservation and Recovery Act (RCRA) and California-only hazardous  
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<sup>1</sup> Mixed waste is radioactive waste that is also hazardous waste under 40 CFR section Part 261. DTSC regulates only the hazardous component(s) of mixed waste.

1 waste.<sup>2</sup> Examples include corrosive liquids, solvents, oils, coolants, contaminated soil,  
2 motor vehicle batteries, metal sludges, polychlorinated biphenyls (PCBs) and PCB-  
3 contaminated equipment, mercury wastes, oily rags, latex and oil-based paint materials,  
4 and spent activated carbon.

5 **B. FACILITY HISTORY**

6 The Facility began operating in Building 85 in April 1997. From the early 1980s  
7 until April 1997, it operated in Building 75. DTSC's most recent 10-year permit for the  
8 Facility was issued in 1993 and expired in 2003. However, the Permittee submitted a  
9 renewal application in November 2002, which extended the 1993 permit by operation of  
10 law pending a final decision by DTSC on the Permit renewal.

11 **C. PERMIT DECISION**

12 In November 2002, the Permittee submitted the Part A and Part B Permit  
13 renewal applications for the Permit (collectively, the Application). In September 2004,  
14 DTSC issued a draft Permit renewal decision for the Facility for a 60-day public  
15 comment period. A public hearing was held on October 20, 2004. The Petitioners filed  
16 comments during the public comment period.

17 Pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §  
18 21000 et seq.), the University is the lead agency for activities at the LBNL, including the  
19 Facility. Also pursuant to CEQA, DTSC is a responsible agency for purposes of  
20 operation of the Facility. The University analyzed the effects of the Facility's operations  
21 in several environmental documents it prepared and certified pursuant to CEQA,  
22 including, but not limited to, a Final Environmental Impact Report (EIR) for Construction  
23 and Replacement of the Hazardous Waste Handling Facility, issued in May, 1990, an  
24 Addendum to that EIR issued in March 2003, the *Final Safety Analysis for the*  
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28 <sup>2</sup> The Permit does not pertain to or authorize storage or treatment of waste that is only radioactive waste.  
The U.S. Department of Energy has authority over the radioactive waste at this Facility.

1 *Hazardous Waste Handling Operations at the LBNL* issued in 1997 and the *Updated*  
2 *Risk Analysis for the LBNL Hazardous Waste Handling Facility*, issued in October 2002  
3 (See pages 10 and 11 of the Permit for a more complete list of CEQA documents).

4 DTSC considered all of the CEQA documents that concerned the Facility and concluded  
5 that they adequately assessed the potential impacts of continued operation of the  
6 Facility under the renewed Permit. Consequently, DTSC determined that preparation  
7 and consideration of additional CEQA documents was not required prior to issuance of  
8 the draft and final renewal Permit.

9  
10 On November 17, 2006, DTSC issued the final Hazardous Waste Facilities  
11 Permit renewal decision for the Facility, along with a Response to Comments document  
12 that included responses to comments that were received during the public comment  
13 period. The changes from the draft permit to the final Permit mainly comprised  
14 corrections to typographical errors and updating of information.

15 **D. PERMIT APPEAL PROCESS**

16 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the  
17 period for filing a petition for review (appeal) of this final Permit decision ended on  
18 December 22, 2006. Petitioners filed their Petition on or before that date. Pursuant to  
19 California Code of Regulations, title 22, sections 66271.14(b)(2) and 66271.15, and  
20 based on the nature of Petitioner's comments, the Permit has been stayed pending  
21 DTSC review of the Petition pursuant to California Code of Regulations, title 22, section  
22 66271.18.

23 **IV. STANDARD OF REVIEW**

24 California Code of Regulations, title 22, section 66271.18(a), provides that any  
25 person who filed comments or participated in the public hearing may petition DTSC for  
26 review of any condition of the final permit decision. Any person who did not file  
27 comments or participate in the public hearing may petition for review of only the  
28 changes from the draft to the final permit decision. Petitions shall include a statement of

1 the reasons supporting the review, including a demonstration that any issues being  
2 raised were raised during the public comment period (including any public hearing for  
3 the draft permit) to the extent required by the regulations.

4 California Code of Regulations, title 22, section 66271.12 requires commenters  
5 to raise all reasonably ascertainable issues by the close of the public comment period.  
6 Specifically, this section states that "All persons, including applicants, who believe any  
7 condition of a draft permit is inappropriate or that the Department's tentative decision to  
8 deny an application or prepare a draft permit is inappropriate, must raise all reasonably  
9 ascertainable issues and submit all reasonably available arguments and factual grounds  
10 supporting their position." Thus, those persons who filed comments, or participated in  
11 the public hearing for the draft permit decision may petition the Department to review  
12 any condition of the final permit decision, to the extent they demonstrate that the issues  
13 raised in the petition for review were either: (i) also raised during the public comment  
14 period for the draft permit decision, including the public hearing, or (ii) were not  
15 reasonably ascertainable at the time of the public comment period.  
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17 Section 66271.18(a) also provides, in pertinent part, that:

18 "The petition shall include a statement of the reasons supporting that  
19 review, including a demonstration that any issues being raised were  
20 raised during the public comment period (including any public hearing)  
21 to the extent required by these regulations and when appropriate, a  
22 showing that the condition in question is based on:  
23

24 (1) a finding of fact or conclusion of law which is clearly  
25 erroneous, or

26 (2) an exercise of discretion or an important policy consideration  
27 which the Department should, in its discretion, review."  
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1 The Petitioners submitted comments on the draft permit during the public  
2 comment period. Therefore, Petitioners have standing to petition for review of any  
3 issues raised during the public comment period for the draft permit renewal decision, as  
4 well as (i) any issues that pertain to changes from the draft to the final Permit decision  
5 and (ii) any issues that were not reasonably ascertainable during the public comment  
6 period for the draft Permit decision.

7 Any issues raised in the appeal that relate to the California Environmental Quality  
8 Act (CEQA, Pub. Resources Code §21000 et seq.) will not be addressed in this Order.  
9 CEQA provides a separate judicial appeal process to resolve disputes concerning  
10 compliance with CEQA. The permit appeal process is not the proper forum in which to  
11 raise CEQA issues.

## 12 **V. FINDINGS**

### 13 **Appeal Comment 1**

14 DTSC issued a HWFP to LBNL in May 1993. As a part of this permit, DTSC  
15 requires LBNL to investigate and clean up all historical releases of hazardous  
16 chemicals. Therefore it is a fact that one of the conditions of the waste permit is the  
17 clean up of historical hazardous chemical releases at LBNL. This condition of the  
18 permit has not been met. Be aware that there are at least eight (8) legacy groundwater  
19 hazardous chemical contamination plumes left onsite, after the Department of Energy  
20 (DOE) ceased funding LBNL's RCRA Environmental Restoration Program (ERP), which  
21 was terminated on September 30, 2006. The contamination, up stream from the city of  
22 Berkeley, in a complex hydrogeology of the Strawberry Creek Watershed, includes the  
23 Old Town Area plumes as well as the large radioactive tritium plume within which at  
24 least seven (7) areas are identified containing Volatile Organic Compounds (VOCs).  
(See attachments 1, 2 & 3.)

25 LBNL's failure to cleanup legacy groundwater hazardous chemical contamination  
26 plumes are a clear variance from DTSC's mandated cleanup policies and therefore,  
27 DTSC should review this important policy consideration.

### 28 **Response**

Petitioners do not have standing to raise this issue under California Code of  
Regulations, title 22, section 66 271.18 (a) because (1) this issue (alleged lack of

1 progress on corrective action) was not raised in written comments or at the public  
2 hearing concerning the draft Permit and (2) this issue was reasonably ascertainable at  
3 the time of the public comment period, which ran from September 21, 2004, through  
4 November 19, 2004. Petitioners commented on the Corrective Measures  
5 Implementation Plan in September 2005, but this was not during the public comment  
6 period for the draft Permit.  
7

8 Even if, *arguendo*, Petitioners had standing to raise this issue in conjunction with  
9 the final Permit decision, DTSC disagrees with Petitioners' claim that the Permittee has  
10 not been investigating, designing and implementing a corrective action program as  
11 required by the 1993 permit. Part IV of the Permit and the Part XI of the Part B  
12 Application document investigations that the Permittee has been conducting and reports  
13 that were prepared from 1991 through 2006, that identify the units and areas that  
14 warrant further investigation and/or corrective action. As discussed in Part IV of the  
15 Permit, the Permittee submitted a Corrective Measures Implementation Workplan in  
16 November 2005, and in March 2006, DTSC approved the plan and directed the  
17 Permittee to proceed with implementation pursuant to the schedule in the plan. The  
18 Part B application and the Corrective Measure Implementation Workplan identify  
19 specific groundwater plumes that will be remediated, including an "Old Town"  
20 groundwater solvent plume. As discussed in Part III of this Order, DTSC does not have  
21 authority over radioactive substances and therefore the aspect of Petitioners' comment  
22 regarding radioactive tritium is not addressed by the DTSC Permit and this Order.  
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## 27 **Appeal Comment 2**

28 Petitioner contends that DTSC should exercise its discretion in not granting the  
permit, in the interest of providing safety to the public. According to the Petitioner,  
access to the Facility had been severely compromised by an active landslide, since the

1 prior winter's rains, which has taken out half of Centennial Drive about 300 meters south  
2 of the entrance gate to the Facility. Petitioner asserted this poses a great danger to the  
3 public, should there be a fire and/or hazardous chemical release at the Facility and  
4 mutual aid is required from the city's fire station No. 2 on Berkeley Way, where the  
5 hazardous materials specialists are located. Petitioner stated that the current and  
6 historic landslide conditions on Centennial Drive are preventing Berkeley fire trucks the  
7 fastest and most direct access to the HWHF.

### 8 **Response**

9 This appeal comment pertains to the CEQA issues for this project. CEQA  
10 provides a separate judicial appeal process to resolve disputes concerning compliance  
11 with CEQA. This appeal proceeding is not the proper forum in which to raise issues  
12 concerning compliance with CEQA. Furthermore, the University and the City of  
13 Berkeley control road design and construction outside of the Facility. DTSC does not  
14 have authority beyond the boundaries of the Facility that is regulated by DTSC's Permit.

15 DTSC's Response to Comments document demonstrates that DTSC carefully  
16 considered seismic, landslide and access issues and concluded that operations at the  
17 Facility that are regulated by the final Permit are adequately protective of public health  
18 and safety. (See, for example, Response to Comments B.4. (c), 18-2, 18-3 and 21-1 (c).  
19 According to these responses, LBNL has its own onsite fully functional fire department,  
20 capable of responding to hazardous waste handling at Facility emergencies in less than  
21 five (5) minutes. In addition to its mutual aid agreement with the City of Berkeley, LBNL  
22 also has a contract with the Alameda County Fire Department and is part of the  
23 California Master Mutual Aid Agreement whereby fire support can be requested through  
24 the local mutual aid coordinator or directly through the City of Oakland. The comment  
25 raised the concern that the City of Berkeley's hazardous materials specialists might not  
26 have the fastest and most direct access to the Facility if and when Centennial Drive is  
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28



1 partially blocked. However, Response B.4. states that the Alameda County Fire  
2 Department has 24 hours/day, seven day/week hazardous materials response  
3 capability and Response 7-2 states that there is more than one access road available.  
4 Numerous responses also indicate that the Facility is designed in accordance with the  
5 California Fire Code and other relevant design criteria.  
6

7 Based on all of the reasons discussed above, DTSC denies review of this appeal  
8 comment because it pertains to CEQA and Petitioner has failed to demonstrate that a  
9 particular permit condition is based on a finding of fact or conclusion of law that is  
10 clearly erroneous or an exercise of discretion or an important policy consideration that  
11 DTSC should, in its discretion, review as required by California Code of Regulations,  
12 title 22, section 66271.18(a).  
13

### 14 **Appeal Comment 3**

15 Petitioner asserts that DTSC failed to answer Comment No. 19-12, in its  
16 response to comments document (November 17, 2006) regarding which alarm and  
17 notification systems will be deployed by LBNL in case of fire and/or earthquake. In an  
18 event of a release of chemical, radioactive, organic or mixed waste from the Facility by  
19 accident or terrorist intent, Petitioner inquired about what alarm or notification systems  
20 would be deployed to protect LBNL personnel, UC staff and students, local residents  
21 and surrounding communities. Petitioner commented that in planning, DTSC's public  
22 safety program policy should follow its mandate to make permit decisions that are  
23 protective of human health and the environment. Petitioner asserted that DTSC's  
24 failure to answer the question above in its Response to Comments indicates that DTSC  
25 has not fulfilled its mandate. Therefore, Petitioner asserted that no permit should be  
26 issued until LBNL has an adequate system of alarms and notification to the public in  
27 place.  
28

### 24 **Response**

25 To analyze risk, safety issues, and specific regulatory requirements, DTSC staff  
26 reviewed among other things (a) the *Final Safety Analysis* prepared in April 1997, which  
27 was updated in October 2002, by the *Updated Risk Analysis for Berkeley Laboratory*  
28 *Hazardous Waste Handling Facility* (collectively referred to in this Order as the "Final

1 Safety Analysis Document" or "FSAD"); and (b) the Contingency Plan prepared by the  
2 Permittee and submitted as part of the Part B Application for the Permit. For the  
3 specific hazardous wastes and container quantities authorized by the Permit, the FSAD  
4 concluded the Facility is engineered to prevent off site migration of liquid waste and that  
5 an airborne release harmful to people off site is a very low risk.

6 With regard to residents that live near the Facility, Response to Comment 19-12  
7 (a) incorporated Response to Comment 18-4. Response to Comment 18-4 (b) stated  
8 that the FSAD determined that risks from an accidental release of hazardous waste  
9 extend only within 99 meters of the Facility, which is within the LBNL fence line and thus  
10 does not create risk (and by implication the need for special notification or alarms  
11 beyond those described below) for nearby residents.

12 For employees, Response to Comment 19-12 (b) incorporated Response to  
13 Comment B.3, which explained that the FSAD analyzed risks associated with normal  
14 operations at the Facility as well as accident scenarios. The study concluded that risks  
15 at the Facility do not exceed Occupational Safety and Health Administration (OSHA),  
16 National Institute for Occupational Safety and Health (NIOSH) and other standard  
17 exposure criteria.

18 DTSC's regulations and the Contingency Plan (incorporated into the Permit)  
19 provide that the primary notification for offsite personnel shall be handled through local  
20 authorities. At LBNL, the onsite Fire Department Emergency Coordinator is empowered  
21 by the Contingency Plan to assess the situation and notify the appropriate local  
22 authorities if a release, fire, or explosion threatens human health or the environment.  
23 (See, *Contingency Plan*, page VIII-71, 8.3 Evacuation of Local Areas.) It would then be  
24 the local authorities' responsibility to notify offsite people, as appropriate. The  
25 Contingency Plan also specifies when LBNL emergency coordinators must notify the  
26 State Office of Homeland Security. The specific notifications are listed in Chapter 5 of  
27 the Contingency Plan, Notification and Reporting, starting on page VIII-43. There are  
28 three kinds of notifications: immediate, after, and later follow -up reporting.

1 Following are regulatory requirements concerning notification and alarms at the  
2 Facility.

- 3 • Facilities shall have an internal communications or alarm system capable of  
4 providing immediate emergency instruction (voice or signal) to facility  
5 personnel; a device to summon emergency assistance, portable fire  
6 extinguishers, and water at adequate volume and pressure. (Cal. Code  
7 Regs., tit. 22, § 66264.32)
- 8 • Facilities shall have access to a communications or alarm system, whenever  
9 hazardous waste is being handled and all personnel involved in the operation  
10 shall have immediate access to an internal alarm or emergency  
11 communication device. (Cal. Code Regs., tit. 22, § 66264.34)
- 12 • Facilities shall attempt to make arrangements for the following : (1)  
13 Familiarizing police, fire departments, emergency response teams and the  
14 local Office of Emergency Services with the layout of the facility, properties of  
15 hazardous waste handled at the facility and associated hazards, places  
16 where facility personnel would normally be working, entrances to and roads  
17 inside the facility, and possible evacuation routes; (2) Where more than one  
18 police and fire department might respond to an emergency, agreements  
19 designating primary emergency authority to a specific police and a specific  
20 fire department, and agreements with any others to provide support to the  
21 primary emergency authority; (3) Agreements with State emergency  
22 response teams, emergency response contractors, and equipment suppliers;  
23 and (4) Familiarizing local hospitals with the properties of hazardous waste  
24 handled at the facility and the types of injuries or illnesses which could result  
25 from fires, explosions, or releases at the facility. (Cal. Code Regs., tit. 22, §  
26 66264.37)
- 27 • California Code of Regulations, title 22, sections 66266.64. 51-56 specify the  
28 purpose, implementation, content, distribution of copies, duties of the  
emergency coordinator, and emergency procedures.

22 The California Code of Regulations, title 22 does not require direct public  
23 notification or use of community alarms if there is a release of hazardous waste from  
24 permitted hazardous waste management units. Federal OSHA standards also do not  
25 require direct notification procedures and alarms as part of the permit conditions. DTSC  
26 has discretionary authority to impose permit conditions more stringent than the baseline  
27 regulatory requirements on a case-by-case basis. For this Permit, the findings of the  
28 FSAD and the provisions within the Facility's Contingency Plan indicated to DTSC staff

1 that the Facility had an adequate alarm and notification system in place with regard to  
2 the hazardous waste operations conducted at the Facility.

3 For the reasons discussed above, DTSC denies this appeal comment because  
4 Petitioner has failed to demonstrate that a particular permit condition is based on a  
5 finding of fact or conclusion of law that is clearly erroneous or an exercise of discretion  
6 that raises an important policy consideration that DTSC should, in its discretion, review  
7 as required by California Code of Regulations, title 22, section 66271.18(a).  
8

9 Because DTSC's Permit only regulates hazardous waste, it was beyond the  
10 scope of DTSC's Response to Comment 19-12 to address releases of radioactive waste  
11 or any chemicals that are not hazardous waste. It is also beyond DTSC's authority and  
12 mandate to address or regulate activities at the LBNL that do not involve hazardous  
13 waste and/or are not regulated by our Permit.  
14

#### 15 **Appeal Comment 4**

16 Petitioner contends that LBNL's request to continue to store the same volumes of  
17 hazardous and mixed waste (23,320 gallons) is to contradict the very purpose of LBNL's  
18 waste minimization program, another condition of the HWFP.

19 Since the 1993 permit, LBNL states that the lab's mixed waste has been reduced  
20 by 91% and hazardous waste by 77%. This averages an overall 84% reduction. To be  
21 an effective and meaningful waste minimization program, DTSC should demand that  
22 LBNL reduce its aggregate capacity of hazardous and mixed-waste to 3,750 gallons to  
23 reflect this 84% reduction.

#### 22 **Response**

23 As discussed in DTSC's Response to Comments document, the Facility is  
24 designed to safely manage the requested capacity. Also, the Facility may want to enter  
25 into other research projects in the future or conduct demolition projects that would  
26 require the permitted capacity. Thus, the capacity allowed in the Permit achieves health  
27 and safety goals and provides the Facility with the operational flexibility it may need.  
28

1 For the reasons discussed above, DTSC finds that Petitioner has failed to meet  
2 the burden to establish that DTSC should grant a review of this issue pursuant to the  
3 criteria for review set forth in California Code of Regulations, title 22, section  
4 66271.18(a), because Petitioner has failed to demonstrate that the permit condition in  
5 question is based on a finding of fact or conclusion of law that is clearly erroneous or  
6 raises an exercise of discretion or an important policy consideration that DTSC should,  
7 in its discretion, review.

#### 8 **Appeal Comment 5**

9  
10 The HWF permit of May 1993, was to be in effect until May 2003. Therefore we  
11 ask that if and when the new permit is issued, the effective starting date should be  
12 made retroactive to May 2003, and the expiration date of any new permit to be set at  
13 May 2013, and not December 2016.

#### 14 **Response**

15 Arguably, Petitioner does not have standing to raise this issue because the  
16 Petition does not demonstrate the issue of setting back the expiration date was raised  
17 during the public comment period, even though the information was reasonably  
18 ascertainable. However, due to the fact that the *specific* effective and expiration dates  
19 were a change from the draft to the final Permit and because the ten (10) year term of  
20 the Permit was raised during the public comment period, DTSC will respond to this  
21 comment.

22  
23 Health and Safety Code section 25200 (c) (1) (B) and California Code of  
24 Regulations, title 22, section 66270.51 extended the term of the previous permit until the  
25 effective date of the renewal Permit. Once the Petition was filed, the renewal Permit  
26 was stayed, and according to the regulations any stayed conditions become effective if  
27 and when DTSC issues an order that denies review pursuant to California Code of  
28 Regulations, title 22, sections 66271.14 and 66271.18. Thus, DTSC does not have the

1 authority to set back the starting date of this Permit so that it overlaps with the term of  
2 the previous permit, which was extended by operation of law.

3 Health and Safety Code section 25200 (c) (1) (A) and California Code of  
4 Regulations, title 22, section 66270.50 allow DTSC to issue permits for up to ten (10)  
5 years. DTSC's permits generally have terms of ten (10) years unless DTSC determines  
6 on a case-by-case basis that there is some reason to issue a permit for less than ten  
7 (10) years. In this case, as discussed in the Response to Comments, DTSC reviewed  
8 all technical information, including the Part B application, CEQA documents and the  
9 Facility Safety Analysis Document (including updates) and determined that the evidence  
10 supported issuing the Permit for the full ten (10) year term. However, if circumstances  
11 change in the future or other information indicates that any activities at the Facility  
12 should be changed or curtailed, DTSC and/or the Permittee can initiate permit  
13 modifications to accomplish those goals. Also, unless and until the entire LBNL ceases  
14 operating, it is likely it will continue to generate hazardous waste. It is more  
15 environmentally protective to have an onsite Facility regulated by a DTSC Permit and  
16 applicable hazardous waste statutes and regulations to store, consolidate and treat  
17 LBNL's hazardous waste prior to shipment off-site.

18  
19 Based on the above reasons, DTSC denies review of this issue because  
20 Petitioner has failed to demonstrate that the permit condition in question is based on a  
21 finding of fact or conclusion of law that is clearly erroneous or an exercise of discretion  
22 or an important policy consideration that DTSC should, in its discretion, review.

23 **Appeal Comment 6**

24 LBNL is not "a university-owned facility" as stated repeatedly in the DTSC's  
25 response to comments document, but is owned by the Department of Energy and the  
26 University of California manages the laboratory for DOE. Please correct this error.  
27  
28

1  
2  
3 **Response**

4 This comment is not an appeal of any condition of the Permit and does not raise  
5 issues that merit review pursuant to California Code of Regulations, title 22, section  
6 66271.18 (a). For clarification however, the Permit and numerous other DTSC  
7 documents state that DOE is the owner and the University is the operator of the Facility.  
8 Any statement that indicates otherwise in the Response to Comments was an error and  
9 is hereby corrected. DTSC apologizes for any confusion the error(s) may have caused.  
10

11 **Appeal Comment 7**

12 In view of the above concerns, we request DTSC require LBNL to include an  
13 analysis of the environmental impacts from the proposed and continued operations of  
14 the HWHF in LBNL's Long Range Development Plan Environmental Impact Report  
15 (LRDP, EIR), due to be released in the next couple of weeks (January 2007).

16 In addition, we request that DTSC postpone its final decision regarding the LBNL  
17 HWHF permit renewal until after the LRDP has been circulated for public comment and  
18 the process has been completed.

19 **Response**

20 For a substantive discussion of this issue, please see Part B.6., of DTSC's  
21 Response to Comments document issued November 17, 2006. This appeal comment  
22 pertains to the CEQA documents and CEQA process for this project. CEQA provides a  
23 separate judicial appeal process to resolve disputes concerning compliance with CEQA.  
24 This appeal proceeding is not the proper forum in which to raise issues concerning  
25 compliance with CEQA. The Comment also does not demonstrate that a permit  
26 condition is based on a finding of fact or conclusion of law that is clearly erroneous, or  
27 an exercise of discretion, or an important policy consideration that DTSC should, in its  
28

1 discretion, review. For these reasons, DTSC denies the review of the issues raised in  
2 this appeal comment.

3  
4 **VI. ORDER**

5 DTSC finds that the Petitioners have failed to demonstrate that the issues raised  
6 in these appeal comments meet the criteria for review and DTSC therefore denies the  
7 Petition. This Order constitutes the Department's final decision on the merits of  
8 Petitioners' appeal. The temporary stay of the Permit is hereby lifted and it is  
9 immediately and fully effective and enforceable.

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12  
13 DATED: July 31, 2007

14 //original signed by//

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16 Watson Gin, P.E., Deputy Director  
17 Hazardous Waste Management Program  
18 Department of Toxic Substances Control.  
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